Supreme Court, U.S.
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No. 02-1756

# In the Supreme Court of the United States

CHAMBER OF COMMERCE OF THE UNITED STATES, ET AL., APPELLANTS

*v.*

FEDERAL ELECTION COMMISSION, ET AL.

*ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA*

## RESPONSE OF APPELLEES FEDERAL ELECTION COMMISSION, ET AL.

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## QUESTION PRESENTED

In 2002, the President signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. BCRA is designed to address various abuses associated with the financing of federal election campaigns and thereby protect the integrity of the federal electoral process. The questions presented by this appeal are as follows:

1. Whether BCRA's funding limitations and disclosure requirements pertaining to "electioneering communications" are constitutional.

2. Whether Section 202 of BCRA, which provides that an "electioneering communication" that is coordinated with a candidate or political party shall be treated as a contribution to the candidate or political party, is constitutional.

3. Whether appellants' challenge to Section 214(a)-(c) of BCRA, which states that expenditures coordinated with a political party shall be treated as contributions to the party (§ 214(a), 116 Stat. 94); directs the Federal Election Commission to promulgate new regulations governing "coordinated communications" (§ 214(b), 116 Stat. 94); and provides that those regulations "shall not require agreement or formal collaboration to establish coordination" (§ 214(c), 116 Stat. 95); is justiciable at this time.

4. Whether Section 214(a)-(c) of BCRA is constitutional.

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## RESPONSE OF APPELLEES FEDERAL ELECTION COMMISSION, ET AL.[1]

### OPINIONS BELOW

The opinions of the district court are not yet reported.

### JURISDICTION

The judgment of the district court was entered on May 2, 2003. Appellants' notice of appeal (J.S. App. 1a-

[1] This response is filed on behalf of the Federal Election Commission (FEC) and David M. Mason, Ellen L. Weintraub, Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Michael E. Toner, in their capacities as Commissioners of the FEC; John Ashcroft, in his capacity as Attorney General of the United States; the United States Department of Justice; the Federal Communications Commission; and the United States of America. Those parties are appellants in *Federal Election Commission* v. *Mitch McConnell, United States Senator*, No. 02-1676.

2a) was filed on May 7, 2003. Appellants' jurisdictional statement was filed on June 2, 2003. The jurisdiction of this Court is invoked under the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, § 403(a)(3), 116 Stat. 114.

## STATEMENT

This case presents a facial challenge to the constitutionality of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. A three-judge panel of the District Court for the District of Columbia held that several provisions of BCRA violate the First Amendment to the Constitution, while sustaining other BCRA provisions against various constitutional challenges. The district court also held that the plaintiffs' challenges to certain BCRA provisions are not justiciable in this suit. Congress has vested this Court with direct appellate jurisdiction over the district court's decision. See BCRA § 403(a)(3), 116 Stat. 114.

Appellants challenge various rulings of the district court that (a) rejected some of appellants' constitutional challenges on the merits, or (b) held certain of their claims to be non-justiciable. As of this date, 11 other jurisdictional statements arising out of the same district court judgment are pending before this Court. See *Mitch McConnell, United States Senator* v. *Federal Election Commission*, No. 02-1674; *National Rifle Association* v. *Federal Election Commission*, No. 02-1675; *Federal Election Commission* v. *Mitch McConnell, United States Senator*, No. 02-1676 (see note 1, *supra*); *John McCain, United States Senator* v. *Mitch McConnell, United States Senator*, No. 02-1702; *Republican National Committee* v. *Federal Election Commission*, No. 02-1727; *National Right to Life Committee, Inc.* v. *Federal Election Commission*, No.

02-1733; *American Civil Liberties Union* v. *Federal Election Commission*, No. 02-1734; *Victoria Jackson Gray Adams* v. *Federal Election Commission*, No. 02-1740; *Congressman Ron Paul* v. *Federal Election Commission*, No. 02-1747; *California Democratic Party* v. *Federal Election Commission*, No. 02-1753; *AFL-CIO* v. *Federal Election Commission*, No. 02-1755.

**DISCUSSION**

Under Section 403(a)(3) of BCRA, the final decision of the district court in this case is "reviewable only by appeal directly to the Supreme Court of the United States." 116 Stat. 114. Pursuant to Section 403(a)(4) of BCRA, this Court is directed "to advance on the docket and to expedite to the greatest possible extent the disposition of the * * * appeal." 116 Stat. 114. In addition to filing our own jurisdictional statement (see note 1, *supra*) to appeal the district court's rulings declaring certain provisions of BCRA to be invalid, appellees will defend on appeal those provisions of the statute that were sustained against appellants' constitutional challenges. Appellees agree, however, that appellants' jurisdictional statement identifies substantial questions of federal law and that this Court should note probable jurisdiction over the appeal.[2]

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[2] On May 23, 2003, appellees filed a motion for expedited briefing schedule applicable to all then-pending appeals (see pp. 2-3, *supra*) from the district court's judgment in this case. That briefing schedule should also be made applicable to the instant appeal.

## CONCLUSION

The Court should note probable jurisdiction.

Respectfully submitted.

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